

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RAFIC SAADEH,

Plaintiff,

-v-

MICHAEL KAGAN, et al.,

Defendants.

20 Civ. 1945 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received letters from (1) counsel for plaintiff Rafic Saadeh, Dkt. 330; (2) counsel for defendant Joshua Kagan, Dkt. 329; and (3) *pro se* defendant Michael Kagan, Dkt. 331, addressing the funds presently being held in escrow in connection with the Estate of Irving Kagan (“the Estate”). From these letters, it appears that some of these funds are held by the United Kingdom law firm (Griffin Law) that conducted the U.K. litigation initiated by Irving Kagan, the settlement of which resulted in the receipt of funds by the Estate, and that some funds are also held by the law firm for Joshua Kagan (Condon & Forsyth, LLP), to whom the Estate had initially caused these to be disbursed based on Joshua Kagan’s having helped fund the U.K. litigation. Disposition of these funds is presently stayed, per Judge Netburn’s order of March 3, 2022. Dkts. 187, 190. That order recognizes that, in the event that some or all of such funds are determined by the Surrogate’s Court of New York County to belong to the Estate, the preservation of those funds would enable the Estate’s creditors, including Saadeh per the default judgment against the Estate entered in his favor in this case, to put in a claim for them.

It is outside this Court’s purview to determine whether the funds in question, in whole or part, belong to the Estate, as opposed to other claimants, including Joshua Kagan. That

determination appears to belong to the Surrogate's Court of New York. This Court does not express any view as to that issue. That issue was not a subject of any part of this litigation, including the claims resolved on the pleadings or by summary judgment, or the claims resolved at a jury trial last month that found Joshua Kagan liable to Saadeh for the tort of constructive fraudulent conveyance.

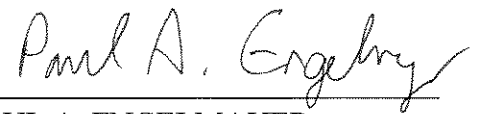
However, the above-listed parties and the Estate, per its administrator Michael Kagan, all recommend in their letters that the funds be consolidated and held in either this Court or the Surrogates Court pending the Surrogate's Court's determination. Given its role in identifying the Estate's assets and creditors, the Surrogate's Court is the more natural eventual depository for the funds. The Court understands, however, that the nature of proceedings in the Surrogates Court is that there may not be a ready opportunity soon to ask that court to take custody of the funds.

This Court accordingly and on consent directs that these funds be transferred to the Clerk of this Court. They will be held here pursuant to this Court's supervision of this litigation, in recognition of the possibility that some or all of these funds will be found to belong to the Estate, a judgment debtor in this case. They will be held here pending further order of this Court. Upon an appropriate order from the Surrogate's Court, the Court will transfer these funds to the registry of that Court. For avoidance of doubt, the Court, in ordering the transfer of the funds here, otherwise maintains the stay on the disposition of these funds.

The Court directs that the funds at issue be transferred, by Friday, January 12, 2024, to the Clerk of this Court. The Court expects that this will be accomplished (1) as to the funds held by Griffin Law, by Michael Kagan, who is to furnish this Order to Griffin Law; and (2) as to the funds held by Condon & Forsyth, by counsel at that firm representing Joshua Kagan. This

transfer shall be effectuated in accordance with Local Civil Rule 67.1 governing the issuance of orders for deposit of funds in interest-bearing accounts with the Court. Pursuant to that rule, the parties are to file, by January 8, 2024, a joint proposed order for the money to be deposited by the Clerk in an interest-bearing account. After inspection by the Clerk's Office, the Court will endorse that order.

SO ORDERED.

A handwritten signature in cursive script, reading "Paul A. Engelmayer", written over a horizontal line.

PAUL A. ENGELMAYER  
United States District Judge

Dated: December 19, 2023  
New York, New York